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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8547 OF 2006

Balaji Builders, Pune — Petitioner
versus
Maharashtra State Electricity Board and others — Respondents

Mr.P.B.Shah for petitioner.
Ms.V.Mhaispurkar, AGP for State.
Ms.A.R.Baxi for responent no.1.

CORAM : A.S.OKA, J.

DATE : 24th April 2007

PC :

1. Heard advocates for the parties. The challenge in this petition under Article 227 of the Constitution of India is to an order dated 2nd August 2001 passed by the Appellate authority in an appeal under section 36(2) of the Indian Electricity Act, 1910. After the submissions were heard of the advocate for the petitioner on 11th April 2007, the learned advocate for the first respondent pointed out that for challenging the impugned order dated 2nd August 2001, the present petition has been filed on 6th November 2006 and there is no explanation whatsoever for

the gross delay in filing the petition. Therefore, the petitioner was permitted to file an additional affidavit for explaining the delay. I have perused the additional affidavit and I have again heard the advocate for the petitioner on the question of delay.

2. The affidavit is filed by the Proprietor of petitioner for the purposes of explaining the delay of five years and more. The first explanation is that a criminal complaint was filed against the petitioner in the year 1998 and the same was disposed of on 29th November 2006. The said contention does not help the petitioner as the complaint was filed in the year 1998 and thereafter the appeal was heard by the appellate authority in the year 2001 when the petitioner actively participated in the hearing. If the petitioner can participate in the hearing before the appellate authority in the year 2001, it is not possible to accept the contention that pendency of criminal case from the year 1998 prevented the petitioner from filing the present petition. The second ground is that Pune Peoples' Co-operative Bank Limited initiated proceedings for recovery of huge amount from the petitioner. Even accepting what is stated in the

affidavit to be true, the proceedings were initiated on the basis of notice dated 19th February 2004. The said notice was issued after more than two years from the date of the impugned order. The third ground which was pleaded was the petitioner's son has left his house. The last ground is that the petitioner is suffering from diabetes and hypertension. In support of last ground, a certificate of a medical practitioner issued on 13.4.2007 has been produced. Thus, none of the grounds in the affidavit, even if accepted as true, can constitute a satisfactory explanation for the delay of five years and more.

3. In the affidavit in reply filed by the first respondent it was pointed out that on the basis of the impugned order, Miscellaneous Application No.112 of 2001 was filed in the Civil Court by the first respondent for recovery of an amount. In the affidavit in reply it is further stated that in the said application filed in the year 2001, the petitioner sought adjournments on various grounds from time to time. The correctness of the said statements in the affidavit in reply has not been disputed.

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4. Considering the aforesaid factual aspects of the case, the petitioner has miserably failed to explain the delay of five years and more. Only on this ground this writ petition under Article 227 of the Constitution of India is not entertained and the same is rejected.

(A.S.OKA, J.)